SPEECH OF
HON. CALEB CUSHING,

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Before the Democracy of Maine.

GENTLEMEN: I propose, on the present occasion, to discuss principles, constitutional principles, and especially those of the democratic party.

That party has directed the administration of the Federal Government for the most part during the period of more than half a century. It has aggregated to the Union the vast domains of Louisiana, Oregon, Florida, Texas, New Mexico and California, and in so doing has carried our limits to the Gulf of Mexico and the Pacific. It has conducted successfully two great foreign wars. It has promoted the domestic prosperity, while maintaining the public honor, and quadrupling the national territory. Above all, it has borne the burden of nationality, reconciling sectional interests, at the South upholding the local rights of the North, and at the North upholding the local rights of the South. In fine, it has met bravely, and discharged faithfully, all the onerous and conflicting duties of the government of this great country, and has written its history in that country's grandeur and glories, at home and abroad, by land and by sea.

And, at this moment, the democratic party is engaged in a desperate struggle with fragments of all the many parties it has heretofore defeated and broken, up. At the North, most of these fragments are combined by sectional jealousy, and cemented by anti-slavery fanaticism, into a sectional Northern party by the name of Republicans, speaking and acting as if intended not so much to administer the government of the Union, as to invade and attempt to conquer the Southern States. At the South. these fragments are combined rather by reminiscences of local antagonism to the democratic party than anything else; for there is nothing to distinguish the Union party from us, either at the South or the North, as regards our common opposition to the Republicans, or in our common attachment to the Constitution and the Union.

We, meanwhile, of the democratic party, are alienated from one another by supposed discrepancies of opinion, and severed into supporters of Mr. Breckinridge and supporters of Mr. Douglas, so as by our own controversies, rather than by the strength of our adversaries, to imperil the integrity of the Constitution and the safety of the Union.

I think it is high time, then, that we of the democratic party, and of both divisions of it, should stop to take an observation, and to look around and see where we are and whither we drift,—that we calmly consider the questions of principles, if any which divide us, and their relation to ourselves and to the general welfare of the Union. That is what I propose to do,—to discuss principles, not persons.

I have temptation enough, to be sure, as President of the National Convention, and as one of the supporters of Mr. Breckinridge, to discuss persons, and to repel the personal assaults on myself made in this canvass, not by Mr. Douglas, but by unwise partisans of his. I refrain however. I speak as one of the friends of Mr. Breckinridge, but not as the enemy of Mr. Douglas, having knowledge of things as to the latter, which lead me to blame others, more than himself, for his irregular and forced candidature, and which impel me, not indeed to justify or extenuate, but to note unresentfully, the erratic counsel, and the desperateness of spirit, which characterize his recent public discourses.

I mean to speak in good faith, and I desire to be heard with candor. I do not condemn those who differ from me. I do but regret and deplore the differences, conceding, but claiming also, the right of private judgment. How, otherwise,—how but in dispassionately reasoning together sometimes, can popular, representative, republican government be maintained? Not otherwise, certainly, in these United States.

The great political issue of the day is undoubtedly the slavery question. Shall the Constitution be overthrown and the Union dissolved, as the Abolitionists proper contend, for the purpose of abolishing slave-labor in the Southern States, or at any rate of separating us of the Northern States from the Southern, where it exisits? That is attack on slavery outside of the Constitution. Or shall the functions of the Federal Government be perverted and abused, and the Constitution be maintained nominally, but violated in fact, for the purpose of attacking

slavery inside of the Constitution? That is, in my judgment, the real, though perhaps unconscious, policy and the ultimate aim of the Republicans. But the Republicans are well aware that the Constitution is stronger in the attachment of the people even of the North, than they and their opinions. Hence their policy of making fight on the secondary accidents of slavery. That enables them to declaim against and denounce slavery, and thus to have the anti-slavery emotions of the North to fill their sails, and waft them along, whilst all of them pretending, and many of them intending, not to infringe the Constitution or endanger the Union. And the accident or incident of slavery, on which the Chicago Republican Convention proposes to act now, is the question of slavery in the Territories. Thus, quite secondary as this question is in the estimation of the Abolitionists proper, and as it is in truth, still, as the Republicans make the attack at that point, there they have to be met by the defenders of the Constitution. And in this way it is, that so comparatively trivial and practically unimportant a question as the possible existence of slavery in one or more of the Territories, becomes the question of the day throughout the United States.

To understand this question thoroughly, and to prepare to rid our minds of all the current fallacies and sophistries regarding it, we must consider for a moment the nature of the Territories, and their relation to the Federal Government.

The United States have, we know, almost from the beginning, possessed an immense domain of unsettled or unappropriated lands, which, as in the progress of the expansion of our population it became settled, has been gradually divided into what were originally demominated "Districts," and more recently "Territories," and then formed into New States. This domain has consisted, first, of territory, or claims of territory, ceded to the Federal Government by the original States; secondly, of territory since acquired by the Federal Government through successive cessions from foreign powers. The number of Districts or Territories thus organized from time to time, beginning with the celebrated ordinance "for the government of the territory of the United States northwest of the river Ohio," anterior to the Constitution, and ending with the recent act to organize the Territories of Nebraska and Kansas, is not less, I think, than fifteen or sixteen; and these organic acts, with numerous general and special acts *in pasi materia*, constitute a voluminous body of what may be termed the colonization laws of the United States. They are the text, by the inspection of which, and their collation with the Constitution of the United States, we are to ascertain the truth, as to the particular matters in controversy between the Republicans and Democrats in the first instance, and then betwixt the Democrats themselves.

The general object of all these acts is one and the same every where, indubitably. It is to provide, for the settlers of each District or Territory, legality of local administration during the transient period of time intervening between its settlement and its constitutional organization as a State, which organization is its transition from the condition of pupilage as a Territory to that of sovereignty as a State.

We, in the United States, build up all government on the fundamental idea of the sovereignty of the people, that is, of the entire mass of the qualified members of the particular body politic. But their numerousness renders it impossible for the people to govern in person, except to a certain degree in small communities, like the town governments of New England, and even these have to act through representative organizations of elected or appointed official persons, with functions limited and defined by law, which law is, directly or indirectly, the expression of the will of the sovereign people. Hence, laws, constitutional, organic, or municipal, to organize the machinery of government. The object of all these laws is to avoid leaving things to the mere discretion of public agents, and to prevent such agents from assuming to do as they please under pretence of the name of the people. Hence, also, in the political theory of the United States, the universal and axiomatic truth, that all acts, of whatever persons, pretending to have legal authority, must be traceable to a constitutional source, either of the United States, or one of the States. All pretence of authority, outside of some such legal source of derivation, whether ascribed to the mystic name of popular sovereignty, or the assumed right of self government, is mere usurpation if done by persons under color of office, and, if done by persons without color of office, is mob violence or force.

For instance, the Legislature of Maine cannot pass any laws under pretence of popular sovereignty: it must find authority for the law in the Constitution of the State.

Again, the City Councils of Bangor cannot pass ordinances under pretence of

popular sovereignty: they must find authority for the ordinance in the organic act of the Legislature constituting the City.

If the City Councils of Bangor or the Legislature of Maine should undertake to deprive either of you, gentlemen, of any right of person or property, you would laugh to scorn the suggestion that they did this in virtue of popular sovereignty: you would demand to see the clause in the organic act of the City or in that of the constitution of the State, in virtue of which the act was done.

So as to the question of self-government. Self-government is an attribute of sovereignty. It signifies political independence and authority. It imports the government of others as well as of one's self. When you talk of self-government in a Territory, you intend that certain persons therein are to make laws to control, not themselves only, but you or me if we happen to be there. But if they undertake to govern me, to affect my right of person or property, they must produce legal authority for what they do, and that legal authority derived from organic law or constitution. It avails nothing for those persons to talk to me about popular sovereignty, self-government, and the rights of man: my rights of man and of self-government, and my popular sovereignty, are as good as theirs; I set mine up against theirs; if such clap-trap phrases are to help them to attack my person or property, the same phrases must equally serve me to defend my person and property. But the whole thing is absurd. The people of a Territory govern themselves, and others in it also, by laws duly enacted in conformity with the organic act and the Constitution, and no otherwise.

But shall not the people rule? This is a cry, which has a plausible sound and seeming in the case, and that is all. I reply,—yes, the people shall rule. But they must rule rightfully and lawfully, not wrongfully and unlawfully; and they must be the people in fact, not in pretension merely. Any persons, few or many, who undertake to rule, that is to rule you and me, to constitute a government, must show their commission. Such persons are not to imprison us, or take away our property, under pretense of being "the people." To make the question practical,—In the City of Bangor, shall not the people rule? Yes, as the City of Bangor, and within the limits of the organic law of the City, and the constitutions and laws of the State of Maine and the United States. Thus and thus only shall the City of Bangor rule. If it undertakes to be the State of Maine, or the United States of America, as such it shall not rule. And if, under pretence that the people are to rule, the City Councils of Bangor assume to do things, which it belongs only to the Legislature or to Congress to do, any of us, who are aggrieved thereby, will appeal for protection and redress from the people of Bangor to the people of the State or the people of the United States. And so, if persons in a Territory, more or less in number, assume injuriously to do things which it belongs only to a State or the United States to do, and what they thus presume to do affects our rights, we shall not be frightened or humbugged, by their pretence of being 'people,' into the surrender of our rights; but shall appeal from them to the true people, the people of the United States, and demand and obtain *protection* at the hands of the constituted judicial, legislative and executive authorities of the people of the United States.

Can the people rule any where,—can *popular* government exist in any country? Thank God, it can, it does, in our country. But the people rule, here, only by respecting itself, and its own name and power. Who are the 'people?' Is it any one man who so pretends? Is it any hundred men? Is it a group of men at the street corners? Is it the persons assembled in this hall? No,—all these are '*people*,' but they are not 'THE people.' The people of any political society are the entire of the qualified members, acting in their lawful capacity as such, and doing the things which they are constitutionally empowered to do as such. Outside of, and beyond that, is revolution or usurpation. Concede that any body of persons, large or small, anywhere in the United States, shall assume to be 'the people' and as such to exercise power without constitutional authority, and popular government is at an end with us. For a few days or weeks, it will be the government of Plug Uglies, Short Boys and Killers, and, after that, of the Soldier who shall happen to be the busiest in killing them. I think it is not worth while to sacrifice or prejudice the rights of the whole people of the United States, and our own individual rights, in order to enable a small bit of the people to 'talk big' and 'make a swell' in one of the Territories.

I hear occasionally some foolish spread-eagle declamation in this regard, which assumes that, as the Thirteen Colonies asserted and successfully maintained their independence of Great Britain, therefore the Territories are or should be invested

with self-government. That means, if it means anything, that the Territories shall set up for themselves as independent sovereignties outside of the Union. It means, if it means anything, that they shall rebel against the United States. It was to a stamp tax and a tea tax imposed by Great Britain, and not to a stamp tax or a tea tax imposed by the United States, that the people of North Carolina and Massachusetts Bay objected. It is quite ridiculous to apply this set of ideas to any question of constitutionality and legality within the Union. Suppose again, as we did on the question of popular sovereignty, that the City Councils of Bangor should assume to confiscate your farm. Would you consider yourself satisfied by the suggestion that they were doing this in the exercise of the right of self-government, by virtue of the principles of the Declaration of Independence, and of the national contest between the Thirteen Colonies and Great Britain?

Take one other illustration of the subject. The old-fashioned town governments of New England are the nearest approach to actual self-government and to the exercise of the functions of sovereignty by the people. We in New England ought to have sufficient experience of them at least to understand their political theory and principles. Did any body in a town meeting ever imagine that the town meeting could do other than but as it was authorized to do by the laws of the State? Did any town ever get such a silly idea into its head as to think of confiscating private property in virtue of the theory of self-government, and the principles of popular sovereignty and the Declaration of Independence? It would be just as reasonable for the Town of Hampden to talk in this way as for the Territory of Kansas to do it, or for any body else to talk so in behalf of the Territory of Kansas.

The fallacies, on which I have been commenting, are so gross, so utterly destitute of all sense and reason,—and the truths on the other side so elementary,—that I am half ashamed to speak of them to grown men, and especially Americans living in the light of books and newspapers, and universally practiced in the business of republican government. It is really going back to A, b, Ab,—and to the multiplication table. And yet, amazing to say, it has become absolutely necessary to come to this, even in New England, in order to rid ourselves of the extraordinary current political fallacies and absurdities regarding the government of the territories.

I repeat, then, the assertion of universal truth, that in the political theory of the United States, all acts, of whatsoever persons pretending to have legal authority of whatsoever nature and wherever performed, must be traceable to a constitutional source, either of the United States or of one of the States. Hence the necessity, in the Territories, of some act or ordinance of Congress, to institute government—I say, the necessity of some ordinance or act of Congress; for persons and things in one of these Territories are not the subjects of any foreign government, like the Canadas; they are not independent powers, like Mexico; they are not citizens of or within the jurisdiction of any one of the States; and therefore, whilst in the territorial condition, they remain, of constitutional necessity, subject to the paramount jurisdiction of the Federal Government,—the nature and extent of that jurisdiction, and its limitations, being defined by the Constitution of the United States.

But it will be asked, may not the Territories be self governing organized political societies? I reply, Yes and No. They may be self-governing in the same way that the City of Bangor is,—to wit, entrusted by the organic law with so much of local government as it may seem to the State convenient or expedient to grant, and no more, so as that the City Councils shall not be able to derogate from the general rights of any of the citizens of the State, or of the State itself, or of the United States. So much of self-government, and no more, have the Territories. Political sovereignty, which is the essence of political self-government, they do not possess, any more than the City of Bangor possesses it.

As *governments* they are but emanations of the Federal Government, precisely in the same way that the City of Bangor's government emanates from the State of Maine. In that sense Congress enacts an organic law, which is the temporary or territorial constitution of the future State. These organic laws, like the constitutions of States, provide the framework of local government, define the powers of public officers, executive, legislative and judicial, and the manner of their appointment or election, and prescribe what things may be done, and what not, by the local authorities of the District or Territory.

This framework of territorial government is according to the universal type of political organization in this country, namely, an executive chief, sometimes elective and sometimes not; a select deliberative body called senate or legislative council, with mixed functions, executive, legislative or judicial, the members of which are sometimes elective and sometimes not; a more numerous deliberative body, having legislative functions only, always elective, and so purporting to be the popular rep-

resentation ; and administrative and judicial officers, variously appointed, and with various duty and authority defined by some law, constitutional, organic or municipal, as the case may be. Such is the type or framework of the Federal Government, that of each of the States, that of all our great Cities ; and such is that of all the Territories.

Each Territory is permitted to have a delegate to the House of Representatives, to speak, but not to vote ; but the Territories have no Senators ; and its inhabitants do not participate in the election of President of the United States.

The political charges of the Territory in every case, and many of the municipal ones, are defrayed by the United States.

Such is the general system of our territorial governments. Minor diversities exist, nevertheless, some of substance and others of form, which require explanation. For instance, as to the matter of form,–according to all the early organic acts, members of the Legislative Councils were appointed by and responsible to the Federal Government, as the Governors still are in every case. But the most notable variations are in some matters of the substance of internal organization or local administration. It suffices here to consider one of these, namely, some organic territorial provisions of acts of Congress, which propose to determine beforehand, and for all time, matters of municipal or internal right, which by the Constitution of the United States appertain to the immediate jurisdiction, not of the Federal Government, but of the separate States.

The Congress of the Confederation inserted in the ordinance for the government of the territory of the United States northwest of the river Ohio, certain organic provisions, to be considered as 'articles of compact between the original States and the people and States in the said territory.' All these provisions, though called principles of liberty, are in fact perpetual restrictions on the legislative and constitutional power of the future new State. For instance, they forbid forever all religious regulations ; they require judicial proceedings to be according to the course of the common law ; and they prohibit involuntary servitude except in the punishment of crimes.

It is due to historic truth to say, and, in order that the North and South may each take its proper share of the responsibility for present difficulties, it is expedient now to say, that Mr. Jefferson was the author of this anti-slavery provision, or rather of the idea of such a provision ; for, although not at the time a member of Congress, he was so three years before, and at that time introduced and endeavored to carry the proposition.

At length, soon afterwards, the government of the United States, under which that ordinance was passed, gave place to the government of the United States as now constituted. It is still a Confederation or Federal Union. It is more complex and complete in its organization than its predecessor ; and it differs radically from that in having entrusted to it a limited jurisdiction for certain defined objects, over the individual citizens of States. Still, like its predecessor, it possesses such powers only as the thirteen sovereign states saw fit to entrust to it ; and in providing for the admission of new States, it provides that they shall come into the Union coequal in all respects of political right and power with the original States. It says nothing of *Territories* as political bodies ; but employs the word " territory " in the same sense as the great ordinance does, that is. only as a geographical or proprietary designation ; and gives no hint of course of Territories with sovereign or quasi-sovereign power in the nature of the States. So stands the Constitution.

Question as to the relation of the Constitution to the peculiar organic provisions of the ordinance does not seem to have arisen immediately. We may infer this from the tenor of a very early act of Congress enacted, as the preamble sets forth, in order that the ordinance may 'continue to have full effect.' We may infer it still more from the fact that when, eight or ten years afterwards, a territorial government, that of Mississippi, was first established to the southwest of the river Ohio, on the territory of the cession of the State of Georgia, the provisions of the ordinance were all made applicable to that territory, with exception only of the article as to involuntary servitude. And so Congress continued, for a long period, on each successive organization of a territorial government, to refer to this ordinance, even in a case of so much incongruousness, in various respects, as that of the Territory of Orleans. Nay, so far from duly considering the question of the constitutionality of the ordinance in these respects, Congress proceeded on the thirtieth year of the present Constitution to enact a slavery provision of the same tenor for the northern part of the original territory of Louisiana ; and did the same thing twenty five and more years later, in the act for the admission of the State of Texas and that of the organization of the Territory of Oregon.

Meanwhile, during the same period of upwards of fifty years, many acts of Congress had been passed, even compacts between the United States and one after another of the new States, which materially impaired the municipal sovereignty of those States in matters of eminent domain and soil. These acts at length drew attention to the unconstitutionality of all provisions of ordinance or act of Congress imposing restriction on the constitutive capacity of new States, or on their legislative capacity, in any particular in which the old States are not equally restricted by the Constitution.

Their unconstitutionality is now the established rule of public law; not established, as so many of the republican orators and writers continue to imagine, by the case of Scott vs. Sanford, but by a series of adjudications long anterior to that, and which cannot now be reversed without unsettling land titles and everything else in all the new States.

And, in accordance with this doctrine it is, that all provisions, for the permanent regulation of the municipal or domestic concerns of new States, have at last come to be excluded from organic acts of Congress.

But some one may say,—Concede for the argument's sake that Congress cannot determine for any State in advance whether it shall or shall not have serf-labor;—May it not, however, exclude this from the Territory while in its territorial condition? I reply, No; first, because the Constitution gives it no power to that effect, and secondly, because to do this would be to preclude the citizens of the Southern States from colonizing with their property, and living in, the common territory of all the States; and it would be to appropriate that to the exclusive colonization and use of the Northern States.

The citizens of the Southern States, entering the Territory of right with their property, are subject to have it taken away from them by the constitution, which the citizens of the Territory may in due time establish, to have effect as such on its becoming a State. In right of its sovereignty and eminent domain a sovereign state may do unjust things. Thus, but for the prohibitory provisions of the Constitution of the United States, any State might make laws impairing the obligations of contracts. So, but for that prohibition, it might pass *ex-post facto* laws. So, again, the Constitution of the United States not prohibiting it, a State may divest vested rights. So, also a State may confiscate property, or take it for public use without just compensation, because in this respect the Constitution of the United States contains no limitation of the organic power of the several States.

In going to settle in one of the new Territories, therefore, the citizen takes the risk of what it may do in this respect as a State, just as he dwells in any State subject to the same contingency. But the territorial Legislature has no lawful authority to that end. While in the territorial condition the organic act is in effect the constitution of the Territory. The Legislative Assembly is the temporary trustee of the Federal Government, just as the Governor or Surveyor General, or any other officer is, to do the things authorized and permitted by the organic and other acts of Congress. In establishing territorial governments, we do not create an irresponsible despotism, and let it loose on the world to plunder and oppress at discretion; on the contrary we constitute a mere agent to execute powers which the principal confers. Thus, by the act organizing the Territories of Nebraska and Kansas, it is provided that 'The legislative power of the Territory shall extend to all *rightful* subjects of legislation consistent with the Constitution of the United States and the provisions of this act,'—and let me add, of other pertinent acts of Congress. But there is nothing in this act or any other, which imparts to territorial legislature, power to destroy private property either directly or indirectly by unfriendly legislation. And, if any such power had been granted in express words, the grant would have been inoperative and void; for the Federal Government possesses no such power, and therefore cannot convey any such power to others; but, on the contrary, the taking of private property by the Federal Government for public purposes without just compensation, that is, its arbitary expropriation, being in positive terms inhibited by the Constitution.

I have thus argued and expounded the nature of territorial government, as it seems to me to be, on comparison of all the organic territorial laws and of the Constitution. But this review would be imperfect without more definite reference to adjudications, in which the law of the subject has been determined, so far as anything can be judically determined, by the courts of the United States.

The Supreme Court, by Chief Justice Marshall, in the case of the American Insurance Company vs. Canter, declares in substance that the power of the Federal Government to govern the Territories, subject to the limitations of the Constitution,

is unquestionable, and that the territory acquires the power with the means of self-government, only by becoming a State.

In the case of Luther vs. Borden, the Supreme Court ruled that in the United Staes, all lawful authority must have a lawful point of departure, and that all legislation or constitution outside of legal channels of action and authority, is insurrection revolution and usurpation.

In, the case of Pollard vs. Hagan, the Supreme Court have decided that none of the new States can be subjected to any limitations or restrictions of their constitutive and legislative powers, except such as the Constitution had imposed on the old States. They repeat this decision in two other cases where the same point was carried up for reconsideration.

In the case of Permoli vs. New Orleans, the Supreme Court decided that the religious freedom article of the ordinance was a nullity, because it restricted the power of the new States in a matter in which the old States were unrestricted.

In the case of Strader vs. Graham, the Supreme Court decided that for the same reason the anti-slavery article of the ordinance was a nullity.

And it was but in the neccessary sequence of this line of decision, that, in the case of Scott vs. Sanford, the Supreme Court decided that neither directly, nor indirectly through its creature the territorial Legislature, could the Federal Government intervene to exclude citizens of the Southern States from right of settlement in a Territory with their property, coequal with the rights of citizens of Northern States.

All the angry fault-finding with the Supreme Court, therefore, on acconnt of the decision in the case of Scott vs. Sanford, and all cavil on the point whether that case is decision or opinion only, are the result of ignorance, quite as much as passion and prejudice; for the same points of territorial law were in fact comprehended by the principles of the case of Pollard vs. Hagan and the others of that series and class of questions.

Pause we now here, gentlemen, to see how the principles of public law thus expounded affect the action of political parties, at the present time.

In the first place, the Republicans still cling to the exploded doctrine of the right of and the duty of Congress to legislate, directly and indirectly for the exclusion of slave labor from the Territories, and its prospective prohibition in new States.

The Democrats, on the other hand, are unanimous, friends of Mr. Breckinridge and friends of Mr. Douglas alike, in denying to Congress either the power or the duty to do this. Accordingly, by one of the resolutions adopted by the Cincinnati Convention, we have introduced into the political creed of the party the doctrine of 'non-interference by Congress with slavery in State and Territory or in the District of Columbia.'

But what is the meaning of this proposition? Does it mean that althongh Congress (that is, the Federal Government), shall not interfere directly, yet it may and shall indirectly, by the hand of its creature and agent, the territorial Legislature? Does it mean to say that if an agent of the Federal Government should interfere, still it cannot and shall not stop him? Certainly the Convention could not have intended thus to trifle with the question. And it did not. For by another resolution it declared how and when the Territory might act, affirmatively or negatively, on the subject of slavery, that is, when it should come 'to form a constitution' so as to be admitted to the Union 'upon terms of perfect equality with the other States.'

The Southern States, with absolute unanimity, admit the power of the new State to establish or abolish slavery by its constitution; they maintain, with all but absolute unanimity, that thus and then, and then and thus only, can the Territory act as a sovereign people; they, with all but absolute unanimity, deny this power to the territorial Legislature; and, if not with perfect unanimity, yet with decisive preponderance of voice, they contend that, if a territorial Legislature, which is the creature of the Federal Government, assumes to usurp authority in this matter, then it is the duty of Congress to interpose to counteract such usurpation, and so protect rights unconstitutionally attacked by such Legislature.

I say, upon this last point, if not unanimity, there is preponderance of opinion. The dissent of the minority is induced by a fallacy so patent, that its belief by some persons of reputation for intelligence astonishes me. They think that, if Congress may act to protect rights in a Territory, it may act to destroy them; that action either way is jurisdiction; and that jurisdiction must be complete jurisdiction. I repeat, the utterance of such fallacy as this by intelligent persons amazes me. Is it not aparent, that most of the institutions of society are for the

purpose of protecting rights, not of destroying them! Thus, for example, the duty and power imposed on the Federal Government to protect the country in case of foreign invasion or domestic insurrection, and its jurisdiction to that effect, do by no manner of means confer the right and power of invasion or insurrection. Strange that such errors should find lodgment in the mind of any man, North or South. Non-interference in the affairs of Europe is the accepted policy of the United States: Does this signify that. if any agent of the United States, or any foreign power there, undertakes to violate American rights of person or property, the Federal Government can do nothing for the protection of those rights? How is it possible there should be conflict of opinion on such a question?

And if it were otherwise, if it could be imagined that a constitutional grant of power to protect involves the power to destroy, should we gain anything by assenting to the alternative hypothesis, and committing plenary power of destruction to a handful of irresponsible persons in a Territory? What Congress does, it does responsibly; every citizen participates in its deliberations and has influence over its acts through the Senators and the Representatives of his State. But this volunteer 'sovereign' in the Territory is amenable to nobody,—unless it be to some Emigrant Aid Company and its manager, Mr. Eli Thayer Of course, the idea suits *him* exactly; and he is now its official advocate in the State of Massachusetts. I prefer the jurisdiction of the Federal Government to the jurisdiction of the Emigrant Aid Company.

Gentlemen, to this point, then, we have arrived: On the one side stand reason, history, judicial decision, fact, and truth; on the other side, two idols, two idols of gilt brass, called 'non-intervention' and 'popular sovereignty,' which are set up on high, and which all men are called upon to fall down to and worship, but which it needs only to rub to show their worthlessness.

It is pretended that the United States, which has power to protect federal rights within either of the States, or even in Europe or farthest Asia, has no power to protect such rights in one of our own Territories. And to give effect to this monstrous doctrine, the territorial Legislature has attributed to it inherent and original sovereign power superior to all the rights of the States and their people.

It is impossible for human error to go further than this. And these mistakes of some are now the misfortune of all. For the doctrine will not bear examination; neither Mr Douglas nor anybody else has ever sustained it by intelligible or even plausible reasoning; it is contrary to all theory of constitutional government; and it specially conflicts with settled public law in the institutions of the United States. Of course, *we* cannot assent to the doctrine, nor follow its lead. Neither self-respect, nor conscientious conviction, nor permanent party interests, nor considerations of the public weal, permit us to do so. And thus the democratic party is distracted, and split in twain, at a time when it most needs unitedness in order to overcome, as, if united, it might, the pernicious plans and purposes of the Republicans.

I speak on this occasion in sorrow, not in anger. I impugn no man's motives; I vituperate no man; I do not even stop to hurl back the missiles of calumny so profusely flung at myself; I do but lament the antagonisms of opinion, which rend us asunder, and, in doing so, threaten to rend assunder the Union itself.

What resource have we? Hope, earnest hope, that the three great central States of New York, Pennsylvania and Virginia, will stand firm, and so save the democratic party and save the Union.

If not, then we have but the future to look to; and among the grave considerations, which that involves, is the future of the democratic party. As to that, in one respect at least, there is no doubt, or shadow of doubt, resting on my mind.

I pretend that the conclusions of constitutional law, which are the avowed profession of faith of that sub-division of the National Convention, which sat in the hall of the Maryland Institute, must and will prevail as the only possible creed of the national democratic party in these United States. I found that pretention on the following reasons of belief or of fact:

These conclusions are the truth of the matter; and truth is mighty; and in spite of all present obstacles, it must and will ultimately prevail; however obscured by personal interests or party passions for awhile, it cannot fail to shine out at length in purity untarnished and in lustrous splendor.

These conclusions are in conformity with the *opinion* of the Supreme Court of the United States in the case of Scott vs. Sanford; that opinion, according to the belief of a great majority of the democratic party, North and South, is *decision*; and it avails nothing for the minority to cavil upon the question whether it be decision or opinion merely; if it be the latter only, still it has overpowering moral authority as deliberate and reasoned opinion of the highest judicial tribunal of the Union

The Convention at the Maryland Institute was a full and true representation of the democratic party in the Southern States and so considerable a representation of democrats in the North, that, without their co-operation, the Democrats cannot carry a single one of the Northern States.

The doctrines of that Convention are in accordance with resolutions adopted by the present Senate of the United States with but two dissentient democratic votes, and which, it is well known, have the approbation of a similar proportion of the democratic members of the present House of Representatives.

These doctrines have been affirmed again and again by democratic State Conventions and by State Legislatures in the Southern States, and have not been contradicted, denied or doubted by any authoritative and responsible democratic body there; and of course any democratic organizations in the Northern States, which do not affirm the same doctrines, may continue to be Democrats, but they cease to be national, and become sectional Democrats.

The doctrines of the Institute Convention are the doctrines of Mr. Buchanan and his Cabinet. It is idle to underestimate the importance of this fact. To be sure, it has been frequent enough, even among Democrats, harshly to criticise some of the acts of President Buchanan's Administration. We have had too much of that. It is the common fate of all Administrations to be the butt of the discontents of friends, and of the devices of aspirants, as well as of the relentless warfare of opponents and enemies. I know full well by experience how much of injustice there is in all these forms and diversities of the opposition of the ill-wishers of an Administration. It is the ammunition of every presidential campaign. And when that campaign is over, and history comes to perform her task of retrospect and review, we have seen how little there is of substance in the aspersions heaped, year after year, on each successive President of the United States In that light, history already regards Franklin Pierce; and so it will regard James Buchanan. And be it remembered that every President of the United States is always, and of necessity, the political head for the time being of the party which elevates him to power. In elevating him to official authority it elevates him to political authority. It is the acts of the Administration, and not the speeches of Congress, which give direction and body to the national policy. It is things, not words, by which men are mastered: words are but the noise which attends on the things. Hence, it is safe to calculate that whither an Administration goes, thither the party which it represents goes, at least in the United States.

Adverting to the present differences on this point in the democratic party at the South, it is to be observed that no Southern Democrat of any authority, whether he be for Mr. Breckinridge or for Mr. Douglas, accepts the views of Mr. Douglas on the power of territorial Legislatures, while the conspicuous partisans of Mr. Douglas at the South expressly repudiate those views; and that although some of his friends at the South profess to understand the doctrine of non-intervention just as he does, yet, when they come to explain themselves, it appears that they do not so understand it; for it yet remains for me to encounter a single Southern statesman, who assumes, as Mr. Douglas does, that for Congress to intervene through its creature, the territorial Legislature, is non-intervention, or that territorial Legislatures possess inherent powers to do things not authorized by the act of Congress organizing the Territory. Of course, that orthodox view of the subject, which is all but universal now, must eventually become absolutely universal among Southern Democrats.

Adverting to the same differences at the North, it is to be observed that the fallacies on the subject, which Mr. Douglas has propagated, being fallacies, must pass away for that reason; and for the more superficial reason, that a fraction of the democratic party at the North, whether it be a large fraction or a small one, cannot maintain itself upon a mere legal fallacy against another fraction of the same party at the North standing on truth and in full communion with the whole democratic party of the South; and that in the attempt so to maintain itself, it becomes at once a sectional third party, and a mere sectional faction, in certain of the Northern States.

I pretend further that the conclusions of constitutional law, which I have endeavored to expound and defend to-day, are not only the sole possible creed of a national democratic party, but the sole possible creed of any national constitutional Union party in the United States.

To arrive at this conclusion, we have but to look at the position of that party, numerous at the South, though less so at the North, which urges the presidential candidature of Mr. Bell. This party, to be sure, does not profess any special creed, and contents itself with proclaiming its loyalty to the Constitution and the Union. But we cannot greatly err, if we infer the creed of this party, or at any rate if we

argue of the policy this party proposes to itself in case it should attain power, from the well ascertained opinions of Mr. Bell himself. I find these opinions set forth in a document published officially by the 'National Executive Committee of the Constitutional Union Party,' and which is denominated 'Mr. Bell's Record.' It consists mainly of extracts from his public speeches and political correspondence.

Mr. Bell, in these extracts, repeatedly and most explicitly and emphatically disputes, denies, and repudiates the territorial sovereignty doctrines of Mr. Douglas. It is unnecessary to cite passages to the point. On this, Mr. Bell is quite as positive as any Northern or Southern Democrat.

And how stands Mr. Bell as to the other and more critical question, that of protection to slave-property in the Territories? This question really includes or at least overrides the other one. It is to escape from the claim of the South to such protection that Mr. Douglas and his Northern advocates would ascribe sovereign power to territorial Legislatures. It is that claim of protection, which so many Northern Democrats are unwilling to admit into the creed of the democratic party, because of its assumed unpopularity at the North. And, to my great surprise, some of the most intelligent of the Northern advocates of Mr. Bell, suppose that this protection claim of Southern Democrats is to prevent the democratic party from retaining or regaining its national position, and that therefore their party is to take its place as the great national party of the Union.

To dispel such illusions, it needs only to consider Mr. Bell's speeches and votes; and a single reference will suffice.

When the bill to organize the Territory of New Mexico was pending before the Senate, Mr. Jefferson Davis, of Mississippi, moved the following amendment.

"And that all laws, usages or customs, pre-existing in the Territories acquired by the United States from Mexico, and which in said Territories restrict, abridge or obstruct the full enjoyment of any right of person or property of a citizen of the United States, as recognized or guarantied by the Constitution or laws of the United States, are hereby declared, and shall be held as repealed."

The effect and object of this amendment will appear from what Mr. Bell said regarding it, as follows:

"In the opinion of by far the greater number of the most eminent jurists of the United States, the laws of Mexico prohibiting slavery at the time of the cession are still in force, and must remain so until they are expressly repealed, either by Congress or the local Legislature. * * * Thus sir, slavery, if it goes into New Mexico at all, must force its way there in despite of local laws and of the interdict imposed by the bill on the Territorial Legislature. Still it is contended that the South is secured in the full benefit of the doctrine held by some of the most distinguished champions of its rights, who maintain *that the Constitution, proprio vigore, that the flag of the Union protects the citizen in the enjoyment of his rights of property of every description recognized as such in any of the States, on every sea, and in every Territory of the Union.* And this doctrine, it is said, is well founded, and if it shall be so declared by the Supreme Court, will authorize the introduction of slavery into New Mexico. *The soundness of the general doctrine held upon this point, I think cannot well be questioned or disproved; and if the question related to a Territory situated as Oregon was, when the United States came into possession of it, property in slaves would be entitled to the protection of the laws and Constitution of the United States;* but the question is more doubtful and formidable to the interests of the South, when it is raised in reference to New Mexico, where there has been an organized society and government for two centuries, and where slavery was prohibited by the local sovereignty before and at the cession to the United States, and where, under that prohibition, slavery had ceased to exist The Constitution, in its application to this Territory, is expected, not merely to protect property in slaves, as in the case of Oregon, before there was any exercise of sovereignty one way or the other, but to supersede the local laws in force prohibiting slavery, when the United States came into possession of it. If the obstructions interposed by these laws were removed, then the principles of the Constitution would be left to their full and fair operation, *and the South might look, with some confidence to the protection of slave property in this Territory, through the Courts of the United States.*"

And so, as the Executive Committee of his party proceeded to say,—in order to remove these 'obstructions,'—in order that the principles of the Constitution might be left to 'their full and fair operation,'—and in order that 'the South might look with some confidence to the protection of slave property in this Territory,' equally as in the others, Mr. Bell voted for the amendment of Mr. Davis

If Mr. Bell had continued to be in the Senate at the time, it cannot be doubted that he would have voted for the celebrated resolutions introduced by Mr. Davis of Mississippi, which deny the pretended sovereignty of territorial Legislatures, and assert the power and the duty of the Federal Government to protect private property against any usurpation of power on the part of Territories.

In confirmation of this it is to be remembered that Mr. Crittenden, who was the first choice of the party for the Presidency, and who is at present its highest and ablest champion, voted for those resolutions,—nay, zealously maintained the truth of the protection doctrine by speech in the Senate.

Thus we see that, if there were any possibility of Mr. Bell being President of the United States, or of any permanent national policy or party being founded on the candidature of Bell, the members of that party at the North would have to take the

protection doctrine into its creed and its action, and to face side by side with Northern Democrats, the supposed unpopularity of that doctrine at the North

Let me pause here on Mr. Bell, and diverge a moment to speak of the disingenuous and paltry devise, by means of which leading partizans of Mr. Douglas, and Mr. Douglas himself, have labored to disparage the cause of Breckinridge democrats. Certain it is that all true Democrats, South or North, are State Rights men not prepared to submit tamely to the violation of the Constitution, and the conversion of this our Federal Government into a consolidated central one, and the perversion of its functions so as to make of them an instrument of assault on any of the individual States. Who shall presume to censure Southern Democrats for this? Shall Mr. A. H. Stevens, or Mr. Soule, or Mr. Foote, or Mr. Herschel V. Johnson? They cannot do it without self stultification. Mr. Bell at any rate, and his friends, shall not For how stands Mr Bell on this point? I quote now from a printed speech of his, though it is not in the "Record,':

"If," he says, "if we of the South have made up our minds to yield nothing, to endure nothing, or if a better spirit actuates us, and we are prepared both to yield something and endure something—and yet cannot bring our Nothern brethren to any terms of just and equitable arrangement and they will continue to vex and harras us now and forever, let us resolve, and let them suffer us, to manage our own affairs our own way.''

Again, he says:

"I say at once, give me separation, give me disunion, give me anything in preference to a Union sustained only by power, by constitutional and legal ties, without confidence. If our future career is to be one of eternal discord, and of angry crimination and recrimination, give me rather separation with all its consequences."

Remember that all these avowals of disunion thoughts and purposes, contingent on the perseverance of the North to "vex and harass" the South by "crimination and recrimination," by refusal of terms of just and equitable arrangement—all these exhortations to separation as in preferenee to "a Union sustained only by power, by Constitutional and legal ties without confidence,"—were uttered by Mr. Bell, not irresponsibly in popular speeches or hasty private letters, but deliberately and officially in his place as a Senator.

I do not refer to these declarations of Mr. Bell in the sense of blame; on the contrary, I commend them; but I say that, in the presence of such declarations on the part of Mr. Bell, it is but party cant with some, and party misrepresentation with others, to talk of the relative *unionism* of Mr. Bell and *disunionism* of Mr. Breckinridge.

To return to my line of argument,—I assert that it is too late now, in view of the final resolution of the Douglas Convention—it is too late for any Northern Democray to say that, as followers of Mr Douglas in preference Mr. Breckinridge, they are to constitute a party in the Union, or even at the North, exempt from bearing their share of the burden of nationality of opinion. Their own Convention at theBaltimore Theatre determine l that. For after having refused to pass any resolution on the point at Charleston, and so produced the temporary rupture of the National Convention, and after persisting in the same line of policy until the consummation of a permanent rupture at Baltimore, the friends of Mr. Douglas then passed a resolution, which many of them here at the North find it convenient to forget, as follows:

"*Resolved*, That it is in accordance with the true interpretation of the Cincinnati Platform that, during the existence of the Territorial Government, the measure of restriction, whatever it may be, imposed by the Federal Constitution on the power of the Territorial Legislature over the subject of domestic relations, as the same has been or shall be hereafter determined by the Supreme Court of the United States, should be respected by all good citizens, and enforced with promptness and fidelity by every brauch of the Government."

So, even this Convention did come to the determination to pass a resolution interpreting the Cincinnati Platform, at last; it did discover 'restriction' on the powers of territorial Legislatures, but without venturing to explore the subject sufficiently to ascertain the exact 'measure' of the 'restriction;' it had heard that there 'has been' some pertinent decision of the Supreme Court, but could not stop to read and see what had been decided; and it declared that whatever 'has been or shall be' so decided as to such 'measure of restriction,' ought to be, not only supported by all good citizens, but 'enforced by every branch of the Government.'

Now, then, it is this measure of restriction on the power of territorial Legislatures. as it 'has been or shall be' determined by the Sup eme Court, and this alone, which Mr. Breckinridge and Mr. Lane, and all, of that wing of the democratic party which supports them, desire to have enforced by the *protective* power of 'every branch of the Government;' that is what the Senate resolutions of Mr. Jefferson Davis contemplate; that is what Mr. Bell and Mr. Crittenden have asserted by their speeches and votes; and that is what the Convention at the Institute pronounced in a little plainer language, when it said:

1. Resolved, That the government of a Territory, organized by an act of Congress, is provisional and temporary, and during its existence all citizens of the United States have an equal right to settle with their property in the Territory without their right of person or property being destroyed or impaired by Congressional or territorial legislation.

"2. Resolved. That it is the duty of the Federal Government in all its departments to protect, when necessary, the rights of persons and property in the Territories, and wherever else its constitutional authority extends."

That is to say, the members of the Convention at the Institute had also heard rumors that there might have been a decision of the Supreme Court defining the 'measure of restriction' on the power of territorial Legislatures, and, unlike the Convention at the Theatre, they proceeded to inquire; they found that there 'has been' such a decision, read it carefully, and took it for their premises, as became 'good citizens.' Thus the premises of the two Conventions are in substance the same, save that the Convention at the Institute had the courage to look the facts directly in the face, and announce them in most explicit terms, and the Convention at the Theatre had not. And such is the only difference also in their conclusions. If any territorial Legislature shall exceed the measure of its constitutional power, says the Convention at the Theatre, then every branch of the Government is to enforce the restriction on that power. '*Every branch* of the Government'—Congress, the Executive, the Judiciary—is to enforce restrictions on the power of the territorial Legislature. What is that but 'to protect' when necessary the right of persons and property in the Territories against any unconstitutional action of territorial Legislatures? One is the *inexplicit* statement of the same doctrine, the other the *explicit*: there is no other material difference between the two propositions.

Gentlemen, you see clearly now what the position is which we severally occupy in the matter of principles.

Mr. Lincoln asserts the constitutional right and the duty of the Federal Government to intervene to prevent the citizens of the Southern States from settling with their slave property in the Territories. Mr. Breckinridge denies this. Mr. Douglas also denies it. And Mr. Bell denies it.

Mr. Breckinridge asserts the right of the Southern States so to settle in the Territories. Mr. Bell asserts it. Mr. Douglas admits it. Mr. Breckinridge and Mr. Bell maintain further that, as the Federal Government is not to intervene against citizens of the Southern States directly, so also it shall not intervene indirectly through its creature, the territorial Legislature; and that, if this its creature undertakes thus by usurpation to intervene, the Federal Government shall stay the hand of its own creature—in other words, that the non-intervention of the Federal Government shall be complete in substance and fact as well as in pretence and name. Here Mr. Douglas separates from them and attributes to the Legislature adverse powers not found in and derived from the Constitution, and powers denied to it by the Supreme Court.

On the premises of Mr. Douglas, the doctrine of non-intervention is a delusion, a snare and a sham. It keeps the word of promise to the ear only, and breaks it to the hope.

Accordingly his own political friends, his own Convention, had to quit him here; for the two Conventions, representing the dissident divisions of the democratic party, passed declaratory protective resolutions, the same in effect, though different in language The Institute Convention said explicitly—it is the duty of the Federal Government, 'in all its departments,' to protect the rights of persons and property against encroachment and usurpation on the part of territorial Legislatures; the Theatre Convention said, less explicitly, that it is the duty of the Federal Government, in all its branches, to enforce the constitutional restrictions on the power of the territorial Legislature.

I say, gentlemen, thus we stand. Let not those Democrats, who plainly and explicitly declare their assent to a constitutional truth, fear to loose by their explicitness; let not those who implicitly, or less explicitly declare their assent to the same truth, hope to gain by their inexplicitness. It is constitutional truth, North and South alike; and the democratic party, North and South alike, and any and every national and constitutional party, will have to stand or fall, according as it does or does not adhere to this cardinal political truth of the coequal constitutional right of each and all of the States in the Union. Democrats, true friends of the Constitution and the Union, who imagine that the democratic party at the North, or any democratic party at the North, can sustain itself against the Republicans by standing timidly, shrinkingly, and tender-footedly, on the platform of adjudicated constitutional truths, deceive themselves egregiously; we can save the party, we can redeem it, in one way, and one only, and that is, in frankly, manfully, firmly, and fearlessly, planting ourselves on the great fundamental truths of the Constitution. Thus have we succeeded hitherto. and if we cannot succeed in the same way hereafter, then it will be evident that the Constitution has lost its authority with the American people, and that the American Union is a beautiful but lifeless corpse, a phantasm of greatness, a mere *simulacrum* of power, and is about to enter, as a memory and a history only, into the lugubrious procession of the departed empires of the Old World.